

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

NICOLAE FREIFELD,

Plaintiff,

MEMORANDUM AND ORDER

-against-

10-CV-4297 (RRM)

U.S. FOODSERVICE, INC., et al.,

Defendants.

ROANNE L. MANN, UNITED STATES MAGISTRATE JUDGE:

In responding to this Court's Order To Show Cause with respect to the timeliness of defendants' removal of the case to federal court, defendants contend that the thirty-day period for removing the action did not begin to run until August 23, 2010, when plaintiff sent defendants copies of the summons and complaint by certified mail. See Affirmation in Support of Motion to Remove Action ¶¶ 13-15. Defendants misread the two cases relied upon, which hold that where, as here, service is effected on a statutory agent (such as New York's Secretary of State), the thirty-day period is measured from the defendants' receipt of the initial pleadings from the statutory agent. See Grello v. J.C. Penny Corp., No. 03 Civ. 8245 (CSH), 2003 WL 22772397, at *2 (S.D.N.Y. Nov. 21, 2003); Rowland v. Giftcertifications.com, Inc., 195 F.Supp.2d 509, 512-13 (S.D.N.Y. 2002).

Defendants' submission is silent as to when they received the complaint *from their designated statutory agent*. Therefore, they have not established that removal was timely. They shall file sworn statements curing this omission by October 15, 2010.

SO ORDERED.

**Dated: Brooklyn, New York
October 12, 2010**

**ROANNE L. MANN
UNITED STATES MAGISTRATE JUDGE**